

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

CHRISTIAN SCOTT VARGO,

Plaintiff,

v.

Civil Action No.: 2:17-cv-03971

ANTHONY PIT & LAGOON, INC.,
d/b/a Anthony P&L, Inc.,
a Iowa Corporation; and
STANLEY DEAN AKIN,
individually,

Defendants.

ANTHONY P&L, INC.'S NOTICE OF REMOVAL

COMES NOW Defendant, Anthony P&L¹, Inc., (hereinafter "Anthony"), by and through its undersigned counsel, and gives notice that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Anthony hereby removes the civil action entitled *Christian Scott Vargo v. Anthony Pit & Lagoon, Inc. and Stanley Dean Akin*, Civil Action No. 17-C-96, from the Circuit Court of Nicholas County West Virginia, where it is presently pending, to the United States District Court for the Southern District of West Virginia, Charleston Division. In support of this removal, Defendant Anthony respectfully represents the following:

1. Plaintiff commenced this action in the Circuit Court of Nicholas County, West Virginia, Civil Action No. 17-C-96 (hereinafter the "State Court Action") on or about August 11, 2017.

¹ Plaintiff incorrectly identifies Anthony P&L, Inc., as "Anthony Pit and Lagoon, Inc." for some unknown reason. "P&L" actually stands for "Power-Only & Liquids."

2. The West Virginia Secretary of State received a copy of the *Summons and Complaint* on August 16, 2017 on behalf of Defendant Anthony. Defendant Anthony is not licensed to do business in West Virginia. The West Virginia Secretary of State transmitted a copy of the *Summons and Complaint* via certified mail, which Defendant Anthony's registered agent received on August 21, 2017. Therefore, pursuant to 28 U.S.C. § 1446(b), this *Notice of Removal* is timely filed because it has been filed within thirty (30) days of receipt of the *Summons and Complaint* by this Defendant.

3. The United States District Court for the Southern District of West Virginia, Charleston Division, is the "district and division" for actions removed from the Circuit Court of Nicholas County, West Virginia, pursuant to 28 U.S.C. §§ 129(a) and 1446(a).

4. Pursuant to 28 U.S.C. § 1446(a), copies of all "process, pleadings, and orders" received by Defendant Anthony from the State Court Action are attached hereto as *Exhibit A*. Additionally, the Docket Sheet from the State Court Action is attached hereto as *Exhibit B*.

5. This civil action arises from a September 25, 2015 automobile collision wherein a 2011 Peterbilt TT tractor trailer operated by Defendant Stanley Dean Akin, collided with a 2004 Ford F-150 pick-up truck operated by Plaintiff Christian Scott Vargo, near US 19 North and Irish Street in Summersville, Nicholas County, West Virginia. Plaintiff Christian Scott Vargo claims that he suffered serious and permanent injuries as a result of the collision, to his body, including his left shoulder, and incurred medical expenses in excess of Seventy-Three Thousand Nine Hundred Dollars and No Cents (\$73,900.00). *See Exhibit A, Complaint*, p. 2, ¶ 11. Plaintiff also asserts that he incurred a loss of income in excess of Five Thousand Dollars and No Cents (\$5,000.00) and reasonably expects to incur future loss of income. *See Id.*, p. 3, ¶ 12.

6. In the *Complaint* filed herein, Plaintiff alleges that Defendant driver Stanley Dean Akin was negligent, reckless, and wanton in allowing his truck tractor to collide with Plaintiff's vehicle, which proximately caused injury to the Plaintiff. Plaintiff also alleges that Defendant Anthony is liable for Mr. Akin's negligence pursuant to the doctrine of *respondeat superior*. Plaintiff alleges that he endured pain, suffering, mental anguish, emotional distress, and permanent scarring. He also asserts a claim for punitive damages against all of the named Defendants. *See generally Id.*

7. There is complete diversity of citizenship between Plaintiff and the Defendants in this action.

8. At the time of the filing of Plaintiff's *Complaint* in the State Court Action, and at all relevant times herein, Plaintiff was a citizen of the State of Virginia. *See Id.*, p. 1, ¶ 1.

9. At the time of the filing of Plaintiff's *Complaint* in the State Court Action, and at all relevant times herein, Defendant Stanley Dean Akin was not a citizen of the State of West Virginia. At all relevant times herein, Mr. Akin was a citizen of the State of South Dakota.

10. At the time of the filing of Plaintiff's *Complaint* in the State Court Action, and at all relevant times herein, Defendant Anthony was not a citizen of the State of West Virginia, as it was not incorporated in West Virginia and its principal place of business was not located in West Virginia. At all relevant times herein, Defendant Anthony was an Iowa corporation with its principal place of business located at 31835 C-38, Le Mars, Iowa, 51031-0526.

11. As of the filing of this *Notice of Removal*, upon information and belief, the citizenship of the respective parties are unchanged.

12. Plaintiff does not seek a specific amount in his *Complaint*. However, the amount in controversy in this matter, exclusive of interests and costs, actually exceeds the sum of Seventy-Five Thousand Dollars and No Cents (\$75,000.00). When the damages sought in Plaintiff's cause of action are considered, the amount in controversy is clearly met, as he alleges damages for medical bills, future medical care, and pain and suffering. Plaintiff also seeks punitive damages against the Defendants.

13. Specifically, Plaintiff asserts that he has incurred, *inter alia*, the following injuries as a result of this accident:

- a. Medical bills exceeding Seventy-Three Thousand Nine Hundred Dollars and No Cents (\$73,900.00);
- b. Future medical treatment of an unknown amount;
- c. Pain, suffering, mental anguish, emotional distress, and permanent scarring;
- d. Lost wages in excess of Five Thousand Dollars and No Cents (\$5,000.00); and
- e. Future lost income of an unknown amount;
- f. Punitive damages.

14. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as Plaintiff is completely diverse in his citizenship from all of the Defendants, and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

15. All Defendants consent to removal pursuant to 28 U.S.C. § 1446(b)(2).

WHEREFORE, the Defendant Anthony P&L, Inc., submits this *Notice of Removal* for the consideration of the Court herein and hereby gives notice to the Clerk of the Circuit Court of Nicholas County, West Virginia, that Removal is hereby effected and that no further action

by the Circuit Court shall take place unless this action be REMANDED by the United States District Court.

**ANTHONY P&L, INC., and
STANLEY DEAN AKIN,**

By Counsel

By /s/Robert L. Massie
Of Counsel

Defendant Anthony P&L, Inc. hereby consents to this removal pursuant to 28 U.S.C. § 1446(b)(2).

By /s/Robert L. Massie
Of Counsel

Defendant Stanley Dean Akin hereby consents to this removal pursuant to 28 U.S.C. § 1446(b)(2).

By /s/Robert L. Massie
Of Counsel

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CERTIFICATE OF SERVICE

The undersigned attorney for the Defendants hereby certifies that on the 12th day of September, 2017, the forgoing "*Anthony P&L, Inc.'s Notice of Removal*" was served upon the following by mailing a true copy thereof by U.S. Mail:

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Christopher B. Frost (WVSB #9411)
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